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DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

[Claim for Retroactive Promotion with Backpay]

FILE: B-197629

DATE: FEB 4, 1981

MATTER OF: John H. Crocker - Entitlement to Backpay

DIGEST: Civilian prevailing rate employee of the Department of the Air Force serving in a WG-02 position claims retroactive temporary promotion and backpay incident to performing the duties of a WG-06 position. Claim is denied where employee has failed to provide sufficient evidence that he was detailed to the higher-graded position or that he performed the full range of duties of that higher-graded position.

Mr. John H. Crocker requests reconsideration of his claim for a retroactive temporary promotion with backpay based upon a detail to a position having a higher grade than that to which he was appointed and paid. Our Claims Division denied the claim by Settlement Certificate No. Z-2816865, October 11, 1979. For the reasons which follow, we sustain the adjudication of our Claims Division.

Mr. Crocker, a civilian employed under the prevailing rate system (Wage Board) by the Department of the Air Force, claims that from June 2, 1974, to September 30, 1977, he performed the duties of the position of Tools and Parts Attendant/Warehouseman, WG-06. During that period he was employed as a Laborer, WG-02. He requested a retroactive temporary promotion with backpay for the duties he claims he performed at the higher-graded position.

On appeal, Mr. Crocker's duly authorized representative states that Mr. Crocker had been detailed to the position because the employee occupying that position was absent on sick leave pending retirement.

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The representative submitted a statement signed by 10 of Mr. Crocker's fellow employees to the effect that Mr. Crocker worked full-time as a Tool and Parts Attendant during the period in question. The representative also contends that Mr. Crocker's supervisor erroneously stated that Mr. Crocker did not work full-time at the higher-graded position.

We held in Turner-Caldwell, 55 Comp. Gen. 539 (1975), affirmed 56 Comp. Gen. 427 (1977) that employees who are detailed to higher-grade positions for more than 120 days without Civil Service Commission (now Office of Personnel Management) approval are entitled to retroactive temporary promotions with back-pay for the period beginning with the 121st day of the detail until the detail is terminated. The Civil Service Commission issued Federal Personnel Manual (FPM) Bulletin No. 300-40 (May 25, 1977) to provide additional information to assist agencies in the proper application of the Turner-Caldwell decision.

Paragraph 4 of the FPM Bulletin defines a detail as the temporary assignment of an employee to a different position within the same agency for a brief, specified period, with the employee returning to regular duties at the end of the detail. The position must be an established one, classified under an occupational standard to a grade or pay level. Paragraph 8(b) makes it clear that competitive positions under the prevailing rate system are covered by our decision.

Claims against the United States, such as for retroactive temporary promotions under the Turner-Caldwell decision, cannot be allowed unless they are corroborated by Government records or other documentary evidence. John R. Figard, B-181700, January 18, 1978. Claims presented to this Office are considered solely on the basis of the written record. The burden of proof rests upon the claimant to establish the liability of the United States and his right to payment. 4 C.F.R. § 31.7 (1980). In the absence of sufficient evidence establishing that the employee was detailed to perform the duties of

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the higher-graded position and his performance of such duties during specific periods of time, there is no legal basis upon which a claim can be allowed. Vernon P. Humphries, B-194890, March 28, 1980.

Paragraph 8F of the FPM Bulletin requires agencies, in accordance with FPM Supplement 296-31, Book II, Subchapter S3-13, to record details in excess of 30 calendar days on SF 52 or other appropriate form and to file it on the permanent side of the employee's Official Personnel Folder. However, in the absence of this form of documentation, the employee may provide other acceptable proof of his detail. Such acceptable documentation includes: (1) official personnel documents or official memorandum of assignment, (2) a decision under established grievance procedures, or (3) a written statement from the person who supervised the employee during the period in question, or other management official familiar with the work, certifying that to his or her personal knowledge the employee performed the duties of the particular established, classified position for the period claimed. Mr. Crocker's evidentiary contention that he was detailed on a continuous assignment in excess of 120 days must be tested against these prescribed criteria.

The record here does not contain any acceptable documentation of Mr. Crocker's detail. Mr. Crocker's representative alleged that Mr. Crocker's supervisor claimed that Mr. Crocker did not perform the duties of the higher-graded position full-time in order to avoid payment of backpay and any possible charges of an illegal detail. As proof that Mr. Crocker worked full-time, his representative submitted a written statement signed by 10 of his fellow employees declaring that Mr. Crocker performed full-time in the higher-graded position for the period in question. In general the statements of co-workers are not sufficient to establish that a detail occurred. Earl Gums, B-196636, January 7, 1980. The written statement here lacks the requisite specificity to prove that Mr. Crocker performed the entire range of duties of the higher-graded position. See Humphries,

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supra. Furthermore, the representative's allegations and the fellow employees' statement are not supported by any evidence in the record and are contrary to the agency findings.

The record does not include any written statement from a supervisor or other management official which serves as sufficient documentation of an official detail. Mr. Crocker's supervisor certified that Mr. Crocker worked an average of 24 hours per week performing the duties of the higher-graded position. His supervisor also noted that no SF 52 for official detail was submitted because no vacant position existed at that time. There is no requirement that an established and classified position be vacant as a condition for a retroactive temporary promotion, 57 Comp. Gen. 767 (1978); Joe F. McLeod, B-191642, November 17, 1978; but an employee must be officially detailed to an existing, established, classified higher-graded position before Turner-Caldwell applies. Harry D. Carlson, B-193892, November 14, 1979; Robert C. Klick, B-193348, April 10, 1979. By working only 24 hours a week in the higher-graded position, Mr. Crocker did not perform the full range of duties of the position. The fact that an employee performed some but not all the duties of a higher-graded position is not sufficient to justify backpay for an extended detail. William L. DeGraw, B-194369, August 24, 1979; Patrick J. Fleming, B-191413, September 19, 1978.

We conclude that Mr. Crocker did not meet his burden of establishing the liability of the United States and his right to payment as provided in 4 C.F.R. § 31.7 (1980). See Richard M. Bartol, B-193618, May 9, 1979.

Accordingly, we sustain the Settlement Certificate issued by our Claims Division, which disallowed Mr. Crocker's claim for a retroactive temporary promotion and backpay.

MILTON J. SOCOLAR

For the Comptroller General
of the United States